IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

Criminal Application No.1525 of 2007

Shri Sharan P. Khanna — Petitioner

Vs.

The State of Maharshtra & anr. — Respondents

Mr.Amit Desai i/b. M/s.Pandya Gandhi & Co. for applicant.

Mr.Girish Kulkarni i/b. M/S.M.Dhruva & Co. for resp. no.2.

Mr.D.P.Adsule, APP for State.

CORAM: B.H.MARLAPALLE, J.

July 25, 2007.

P.C.

1. Heard Mr.Amit Desai, the learned Counsel for the applicant, Mr.Kulkarni for the respondent No.2 and the learned APP appears for the State.

2. Rule. Respondents waive service. By consent Rule is made returnable forthwith.

3. The applicant seeks to invoke inherent powers

under Section 482 of Cr.P.C. for quashing the proceedings in Criminal Complaint No.6321/SS/2005 wherein process has been issued against the applicant by the learned Addl. Chief Metropolitan Magistrate's 28th Court at Esplanade, Mumbai. The order of issuance of process was challenged in Criminal Revision Application under Stamp No.1130 of 2007 and the said revision has been dismissed as withdrawn along with Misc. Application No.376 of 2007 by the learned Addl. Sessions Judge by his order dated 8/3/2007.

4. The applicant is the original accused in Criminal Complaint No.6321/SS/2005 filed under Section 138 of the Negotiable Instruments Act. It has been contended by Mr.Desai that the cheque drawn by the present applicant in favour of the respondent no.2 for an amount of Rs.1,28,52,000/- and dated 30/6/2005 was deposited and it was returned as dishonoured on 4/7/2005 with the remarks "Payment stopped by drawer". Consequently as per Mr.Desai the respondent no.2 issued notice on 12/7/2005 and demanded the payment of Rs.1,28,52,000/-. The dishonoured cheque was redeposited on 9/8/2005 and it was again dishonoured on 11/8/2005 with the remarks

"Payment stopped by drawer". Consequently second statutory notice was issued on 26/8/2005 and complaint was filed on 21/9/2005 before the trial Court. Mr.Desai, therefore, submitted that when the complainant suppressed the first legal notice dated 12/7/2005 while filing the complaint on the basis of the second legal notice dated 26/8/2005, that itself would be sufficient ground to quash the process issued against the applicant-accused. All these issues could have been gone through by the Revision Court.

5. However, it was submitted that the revision was not filed in time and, therefore, Misc. Application No.376 of 2007 came to be filed for condonation of delay. Undoubtedly the Revision Court has the powers to entertain such application and decide the same on its own merits. It is not known why the learned Advocate appearing for the Revision applicant prayed for leave to withdraw the revision application along with the misc. application. The issues sought to be reagitated in this application could be efficaciously gone into by the Revision Court itself. The learned counsel for the original complainant / respondent no.2 submitted that the

affidavit by way of examination-in-chief of the complainant has been filed and, therefore, the trial has commenced. Mr.Desai, on the other hand, on instructions, stated that no further steps have been taken to commence the trial and on the contrary an application has been filed by the complainant for amendment of the complaint.

6. It is not necessary to deal with these controversies and it is admitted that the recording of oral depositions has not yet been started though affidavit by way of examination-in-chief has been filed.

7. In the premises the application is allowed partly and Revision Application under Stamp No.1130 of 2007 along with Misc. Application No.376 of 2007 is hereby restored to the file of the learned Addl. Sessions Judge for Greater Mumbai by setting aside the order dated 8/3/2007. Parties to appear before the Revision Court on 1st August 2007 at 11 a.m. and it is made clear that first the misc. application for condonation of delay will have to be heard and decided. Undoubtedly, the applicant would be at liberty to apply for amendment of the misc.

application and the original complainant would be at liberty to file reply / additional reply.

8. Rule is made absolute accordingly in terms of the above directions.

(B.H.MARL